

ESSAYS

THE FIRE THIS TIME*

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On Thursday morning, after the first night of riots, I drove my children to school, and we passed a furniture store that had burned during the night. My eight-year-old son asked me why the building had been set on fire. I explained that some people were terribly angry at the jury's verdict in the Rodney King case and that they had expressed their rage in a very bad way by setting fire to other people's property. My son listened carefully but was obviously dissatisfied with the answer. He replied, "But Dad, why did they burn *this* building?" I had no answer.

That night the smell of smoke in our house became overpowering. At first, I assumed that the smell was the result of the fires burning throughout the city and the dense black clouds that darkened the sky. Then we heard on television that a camera store literally down our block had been torched. We walked to our corner and watched mesmerized as firefighters tried to put out a blaze in a building that we passed daily.

Again my son asked why they had burned *that* building. This time, though, there was real fear in his voice. He and my younger son were obviously very frightened. It was one thing to hear about a riot on television or even to see a gutted building after the fire was over, but it was something far different to see a building down the block on fire.

As a parent, I wanted to reassure my children that they were safe in their home. At the same time, I wanted to validate their feelings, to let them know that there was every reason to be afraid and that I too was scared. I was at a loss as to how to accomplish both of these goals simultaneously.

* The title is based on a provocative book, written almost three decades ago, by James Baldwin, *The Fire Next Time* (1963).

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After Thursday night's curfew, the riots began to wane. Some friends who lived in harder hit areas came to stay with us, and my children were distracted and reassured by the commotion of a house full of people. Slowly routines began to reemerge.

In the days and weeks following the riots, my children became used to the sight of burnt out buildings. No longer did my son ask why a particular structure had been torched. He knew I had no answer. But the question he asked me that Thursday morning during the riots has bothered me ever since, and answering it is the focus of this Essay. How can there be so much anger that people will burn buildings randomly, even just for the sake of destroying them?

In reflecting on this question, I want to make three points. First, the riots reflected outrage borne of decades of our government ignoring urban problems. When people come to believe that a system offers them nothing, they have nothing to lose by burning it down. Second, this reality does not apologize for the conduct of those involved in the rioting and looting. Quite the contrary, I vehemently disagree with those who want to call the riot a "rebellion" or seek to glorify those who participated. Finally, it is important to consider what the riots likely mean for the future of this city and, more generally, urban areas throughout the United States.

I.

In 1967, following riots in cities across the country, President Lyndon Johnson appointed a commission, chaired by Illinois Governor Otto Kerner, to investigate the causes of the urban violence and to make recommendations to prevent it from recurring.¹ The Commission's report remains vitally relevant:

This is our basic conclusion: Our nation is moving toward two societies, one black, one white—separate and unequal.

Reaction to last summer's disorders has quickened the movement and deepened the division. Discrimination and segregation have long permeated much of American life; they now threaten the future of every American.

1. President Johnson's remarks upon establishing the Kerner Commission, together with Exec. Order No. 11,365, which created the Commission, are reprinted in U.S. NAT'L ADVISORY COMM'N ON CIVIL DISORDERS, REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS 295-96 (1968) [hereinafter KERNER COMM'N].

The deepening racial division is not inevitable. The movement apart can be reversed. Choice is still possible. . . .

To pursue our present course will involve the continuing polarization of the American community and, ultimately, the destruction of basic democratic values.

The alternative is not blind repression or capitulation to lawlessness. It is the realization of common opportunities for all within a single society.

This alternative will require a commitment to national action—compassionate, massive and sustained, backed by the resources of the most powerful and the richest nation on the earth. From every American it will require new attitudes, new understanding, and, above all, new will.

The vital needs of the nation must be met; hard choices must be made, and, if necessary, new taxes enacted.²

The Kerner Commission made detailed recommendations to deal with the problem of unemployment in the black community, to equalize educational opportunity, to reform the welfare system, and to improve the quality of inner city housing. Unfortunately, these reforms never were implemented; the urgent call for action went unheeded. Just months after the Commission issued its report, Richard Nixon was elected president, and he pursued a policy of “benign neglect” towards urban problems. Even the brief interlude of a Democratic president, from 1976 to 1980, brought no new initiatives to deal with urban problems.

If the Nixon approach could be charitably called “benign neglect,” then Presidents Reagan and Bush followed a strategy that must be termed “malignant.” For twelve years, federal funding of poverty programs has been slashed repeatedly and federal urban assistance has been dramatically reduced.³ No replacement approaches have been advocated or implemented. Indeed, welfare reform as preached by Presidents Reagan and Bush has been a synonym for restricting eligibility and cutting benefits.

Every problem examined by the Kerner Commission has worsened in the last quarter century. Unemployment among African-Americans is more than double that among whites. In April 1992, when the Los

2. *Id.* at 1-2.

3. *Rise in Poverty Follows Decade of Republican Cuts in Anti-Poverty Programs*, PR NEWSWIRE ASSOC., Sept. 3, 1992, available in LEXIS, Nexis Library, PRNEWS File.

Angeles riots occurred, the national unemployment rate for black men twenty years and older was 14.5%; for white men, it was 7%.⁴ For black teenagers in inner cities, the rate is nearly 50%.⁵ And these statistics underestimate the problem: "Over one quarter of young black men in the critical ages 20 to 24 years old . . . have dropped out of the economy, in the sense that they are not in school, not working, and not actively seeking work."⁶

In light of these statistics it is not surprising that poverty within the African-American community far exceeds that in the white community. While 10.7% of whites are below the poverty line, 28.1% of Hispanics and 31.9% of blacks are.⁷ Forty-four percent of all black children and forty percent of all Hispanic children live below the poverty level.⁸ And the problem of poverty is getting worse. After dramatic improvements in reducing overall poverty during the 1960s, the percentage of Americans who are impoverished increased during the 1980s.⁹ Furthermore, the gap between rich and poor is widening.¹⁰

The Kerner Commission warned that "[u]nemployment and underemployment are among the most persistent and serious grievances of disadvantaged minorities. The pervasive effects of these conditions on the racial ghetto is inextricably linked to the problem of civil disorder."¹¹ The Commission's proposals for massive new job creation and training efforts never were adopted.

The Commission also focused on the poor quality of inner-city school systems and the disparity in educational funding for blacks and whites. The Commission declared that "for many minorities and particularly for the children of the racial ghetto, the schools have failed to provide the educational experience which [sic] could help overcome the

4. Carol Kleinman, *Black Men Striving for an Equal Chance*, CHI. TRIB., July 19, 1992, at 1.

5. Robert Green, *Black Unemployment Said To Be At Crisis Levels*, REUTER BUS. REP., June 5, 1992, available in LEXIS, Nexis Library, BUSRPT File.

6. GLEN C. LOURY, *ACHIEVING THE 'DREAM': A CHALLENGE TO LIBERALS AND TO CONSERVATIVES IN THE SPIRIT OF MARTIN LUTHER KING, JR.* (Heritage Found. Rep. No. 1, 1990), available in LEXIS, Nexis Library, HFRPTS File.

7. These statistics are drawn from U.S. DEP'T OF COMMERCE, *STATISTICAL ABSTRACT OF THE UNITED STATES* 458 (112th ed. 1992) (citing the official poverty statistics from the U.S. BUREAU OF THE CENSUS, *CURRENT POPULATION REPORTS*, series P-60, no. 175, and earlier reports).

8. *Id.* at 45.

9. Isarel V. Sawhill, *Poverty in the U.S.: Why Is It So Persistent?*, 26 J. ECON. LITERATURE 1073, 1082-83 (1988).

10. Stanley Meisler & Sam Fulwood III, *Economic Gap Bodes Ill for the United States*, L.A. TIMES, July 15, 1990, at A1.

11. KERNER COMM'N, *supra* note 1, at 413.

effects of discrimination and deprivation.”¹² The Commission noted that “[t]his failure is one of the persistent sources of grievance and resentment within the Negro community.”¹³

Yet, in the last twenty-five years, urban schools have gotten much, much worse. In his powerful recent book, *Savage Inequalities: Children in America's Schools*, Jonathan Kozol examines the changes in American schools between 1964 and 1991.¹⁴ After visiting urban schools throughout the country, Kozol reported his finding as follows:

Liberal critics of the Reagan era sometimes note that social policy in the United States, to the extent that it concerns black children and poor children, has been turned back several decades. But this assertion, which is accurate as a description of some setbacks in the areas of housing, health, and welfare, is not adequate to speak about the present-day reality in public education. In public schooling, social policy has been turned back almost one hundred years.¹⁵

Kozol describes the overcrowding, the shortages of books and materials, and the gross inadequacies of inner-city schools. In every urban area, far more money is spent on the average white child's education than on that of the average black child. For example, in the affluent suburbs of Chicago, which comprise the Niles Township High School District, \$9371 is spent per pupil and in the neighboring New Trier School District, \$8823 is spent per student.¹⁶ By contrast, in the Chicago public schools the expenditure is \$5265 per pupil.¹⁷ In Princeton, New Jersey, \$7725 is spent per student, while in Camden only \$3538 is spent.¹⁸

Problems of housing and crime in the inner city also have gotten much worse since the Kerner Commission issued its report in 1968. The number of homeless is difficult to measure, but it is estimated that there are between 250,000 and 3,000,000 homeless across the country.¹⁹ The homeless suffer extreme poverty. The average income for a homeless person is only \$167 a month (or about one-third of the poverty level

12. *Id.* at 424-25.

13. *Id.* at 425.

14. JONATHAN, KOZOL, *SAVAGE INEQUALITIES: CHILDREN IN AMERICA'S SCHOOLS* (1991).

15. *Id.* at 4.

16. *Id.* at 236.

17. *Id.*

18. *Id.*

19. Peter H. Rossi & James D. Wright, *The Urban Homeless: A Portrait of Urban Dislocation*, 501 ANNALS AM. ACAD. POL. & SOC. SCI., Jan. 1989, at 132, 133.

income), with eighteen percent of the homeless reporting no income whatsoever.²⁰

Crime in inner-city neighborhoods is far worse than the Kerner Commission could have predicted in the late 1960s. Gangs, once romanticized in plays and movies like *West Side Story*, are now openly violent. Drive-by shootings routinely kill innocent bystanders.

Twenty-five years ago, the Kerner Commission carefully studied the genesis of urban violence and told the nation that preventing more and worse riots required immediate action. Action never was taken and the problems have gotten much more severe. Society's indifference toward urban problems has only increased the African-American community's enormous rage at a society that seems hostile toward that community's problems.

Undoubtedly, some of the rioting and looting that occurred was simply the frenzy of a mob out of control. Television stations broadcast pictures of families leaving stores with carts full of stolen merchandise. In all likelihood, these were people acting less out of deep anger and more out of opportunism. Yet, to dismiss the riots in that manner would be tragically unwise. The riots exploded because there was a deep well of rage to act as the fuel.

The acquittal of the officers who beat Rodney King in the face of a videotape that virtually everyone had seen was the spark, but not really the cause of the riots. The verdict was a symbol of a system that seems totally unwilling to care about, let alone try to help, African-Americans. In the tradition of American riots, this resulted in lashing out and burning buildings. Unlike most earlier urban violence, the Los Angeles riots did not remain confined to inner-city ghettos. Car loads of teenagers traveled throughout the city looting and firebombing almost at random. Hundreds of buildings were destroyed.

During and immediately after the riots people spoke in hushed tones and expressed shock that such a tragedy could happen. My reaction was that the tragedy was inevitable. The Kerner Commission warned America, but society ignored the plea.

II.

My expression of understanding should not, however, be read as condoning the violence. A frightening thing occurred in the aftermath of

20. *Id.* at 135-36.

the riots: The rioters were made into heroes of sorts. Progressives began to refer to the violence as a "rebellion." "Riot" was regarded as politically incorrect terminology. Some called for amnesty of those arrested on the ground that they were "political prisoners." Worst and most frightening, some are glorifying the men who savagely beat truck driver Reginald Denny. I saw a *Nightline* program where a Compton City Council woman promised another wave of riots if they were convicted.²¹

Society cannot and should not condone violence as a form of expressing dissatisfaction or even rage. Those who looted electronic stores were not rebelling, they were stealing. Those who burned buildings were not rebelling, they were committing arson. Although many were arrested unfairly, especially for curfew violations, that does not mean that all who were arrested are political prisoners. To even use the phrase "political prisoners" in this context cheapens the intellectual and emotional currency of the phrase.

Immediately after the four men were arrested for beating Reginald Denny, some irresponsible community leaders began to equate them with the four police officers who beat Rodney King. Statements were made that if the four white police officers were not convicted for beating a black man, then the four black men should not be convicted for beating a white man.

This analogy is outrageous. At the very least, as we all learned from our parents long ago, "two wrongs don't make a right." The injustice of the police officers' acquittal does not justify another injustice. Besides, the legal issues in the two cases are markedly different. Police officers are allowed to use force in restraining suspects, and the ultimate issue for the jury was whether these officers used, excessive force. Other citizens certainly do not have any legal authority to use force, let alone to savagely beat an innocent man over the head with a brick. This, of course, is not to judge whether the men charged actually committed the beating of Denny shown on the videotape. The point is simply that the comparisons to the King beating are misguided and dangerous.

The more general point is that to recognize the riots as being caused by society's racism and failure to address urban problems is not to apologize for or justify the conduct of the rioters. Their behavior was wrong; it inflicted grave injuries on the city, especially on the rioters' own communities. They were not and must not be made into heroes.

21. *Nightline: Los Angeles—Two Visions of Justice* (ABC television broadcast, June 5, 1992).

III.

The Kerner Commission concluded its report by quoting the distinguished scholar Kenneth Clark. Clark, referring to the reports of earlier riot commissions, made the following statement:

I read that report . . . of the 1919 riot in Chicago, and it is as if I were reading the report of the investigating committee on the Harlem riot of 1935, the report of the investigating committee on the Harlem riot of 1943, the report of the McCone Commission on the Watts riot.

I must again in candor say to you members of this Commission—it is a kind of Alice in Wonderland with the same moving picture re-shown over and over again, the same analysis, the same recommendations, and the same inaction.²²

Although it is a frightening thought, I predict that the Los Angeles riots are the first of a new wave of urban violence that will plague this country. Like the Los Angeles riots, the violence will be more savage and more dispersed throughout cities. More innocent people will be beaten and shot. Rioters will spread through cities, burning not only their communities but other neighborhoods as well. The specific events that will trigger the violence are obviously unknown, but if the past is any indication, instances of police brutality likely will be at the center of the events.

There are countless proposals for action, many offered by the Kerner Commission a quarter century ago. The key questions are: What can be done to get them adopted? What role can lawyers play?

Three messages must be communicated as a predicate to national action. First, urban poverty is an extremely serious problem, and urgent efforts must be made to solve it. The poor are invisible to most Americans. In most cities, the poor, and especially poor people of color, are physically segregated. A big-city dweller can avoid ever seeing the poorer neighborhoods. The hopelessness of inner-city poverty must be acknowledged. The nation must recognize that action is essential to decrease unemployment, to improve schools, and to enhance social service programs.

Second, people must be persuaded that efforts to remedy the problems of the inner city can work. One of the worst misconceptions drawn from the 1960s is that government anti-poverty programs do not

22. KERNER COMM'N, *supra* note 1, at 265.

work.²³ There is a strong sense in society that there was a major effort to eliminate poverty, that it failed, and that future efforts would be futile. The frustration with government efforts helps to explain why there is so little being done to devise new programs or to expand and revitalize old ones.

In part, the rhetoric of Lyndon Johnson and the "Great Society" is responsible. Johnson declared his effort to be a "War on Poverty." War generally has winners and losers. The mental image created was that government was going to vanquish and eliminate poverty. The continued existence of poverty was evidence to the rioters in Los Angeles that the battle was lost and the war futile.

But the government's programs were designed to alleviate the effects of poverty—hunger, lack of quality shelter, and lack of access to medical care. With limited exceptions, like Head Start and job training programs, the effort was not designed to eliminate poverty itself. The implicit promise was an end to poverty, but little was done in that direction. The effort was aimed at reducing the plight of the poor, but that important goal is not captured in the metaphor of a "War on Poverty."

Actually, considering each program's objectives, government programs were for the most part quite successful. Between 1960 and 1969, the poverty rate declined from 22.2% to 12.1%.²⁴ Perhaps more importantly, these programs succeeded at what they were designed to do: reduce the misery of poverty. Food stamps fed the hungry, Medicare and Medicaid provided needed medical care to millions, and public housing offered shelter. But these examples of success got lost and were drowned out by a sense of an unwinnable war.

On the other hand, these poverty programs certainly were not an unqualified triumph. Money was misspent. Fraud occurred. Medical programs fueled inflation. Public housing projects often became crime-infested ghettos. Giving up, however, was the wrong lesson to take from the experience. People must be convinced that government action can work.

Third, Americans must be persuaded that acting to solve urban problems is in their best interest. The political reality is that society is

23. I develop this point more fully in Erwin Chemerinsky, *Making the Case for a Constitutional Right to Minimum Entitlements*, 44 MERCER L. REV. 525 (1993).

24. Sawhill, *supra* note 9, at 1082-83.

unwilling to pay sufficient taxes for even minimally necessary government programs. Welfare cuts are politically salable, but new welfare programs are not. Appeals to altruism and a moral duty are not going to persuade enough people to get legislation adopted.

Therefore, the appeal must be to self-interest. Society will pay for urban problems one way or another. It can pay in lost human potential, growing anger in inner cities, and ultimately in more destructive riots. Or society can pay in preventative measures to improve lives and reduce frustration.

Nothing was done after the 1960s riots, and the problems got worse. Will the Los Angeles riots of 1992 be viewed as a plea for action, as a wake up call to the seriousness of urban problems? Or will the nation continue to fulfill the sad prophecy of the Kerner Commission, of "two societies, one black, one white—separate and unequal"?

IV. CONCLUSION

On April 5, 1968, a riot occurred in the south side of Chicago—and in many other cities as well—following the assassination of Martin Luther King, Jr. As I took a bus home from school that day, the bus passed burning cars and buildings. I saw people breaking into stores and looting. I was incredibly scared.

Twenty-four years later, I stood with my children and watched the effects of another riot. We were frightened as we saw the effects of a riot down the block from our home.

A quarter century from now, will my grandchildren again see urban violence borne of desperation and embitterment? I am convinced that they will unless society finally heeds the call to action issued by the Kerner Commission:

It is time now to turn with all the purpose at our command to the major unfinished business of this nation. It is time to adopt strategies for actions that will produce quick and visible progress. It is time to make good the promises of American democracy to all citizens—urban and rural, white and black, Spanish-surname, American Indian, and every minority group.²⁵

25. KERNER COMM'N, *supra* note 1, at 2.